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SENATE

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PROVIDING FOR THE ALTERATION, RECONSTRUCTION, OR RELOCATION OF CERTAIN HIGHWAY AND RAILROAD BRIDGES OVER THE COLUMBIA RIVER OR ITS NAVIGABLE TRIBUTARIES

JULY 3 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. CHAVEZ, from the Committee on Public Works, submitted the following

REPORT

[To accompany H. R. 2572]

The Committee on Public Works, to whom was referred the bill (H. R. 2572) to provide for the alteration, reconstruction, or relocation of certain highway and railroad bridges over the Columbia River or its navigable tributaries, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Page 3, line 13, change the period to a colon, strike out all language on lines 14 through 25, and strike out on page 4, lines 1 through 5, everything before the word "*Provided*,".

Page 4, line 10, strike out "(c)" and substitute in lieu thereof "(b)".

H. R. 2572 provides that the Secretary of the Army shall compensate the owner of any bridge, trestle, or other highway or railroad structure, and approaches thereto, located over the pool formed by the McNary Lock and Dam on the Columbia River and its navigable tributaries, for the reasonable actual cost of protection, alteration, reconstruction, relocation, or replacement of any such facilities as may be damaged or impaired, or as may be necessary to meet requirements of navigation or flood control, as a result of the construction of the McNary Lock and Dam. Such compensation would be provided from appropriations made by Congress for the construction of the McNary Lock and Dam or for maintenance and improvement of rivers and harbors.

Under the terms of the bill the Secretary of the Army would be empowered to enter into contracts with the owners of the affected facilities to provide for money compensation or for performance of work by the Secretary of the Army.

Provision is also made that the bridge owner, or the Secretary of the Army, may bring suit in the district court of the United States to enforce their contractual rights, or for a declaration of their rights under the proposed act.

The Supreme Court of the United States has held that ownership of structures in or over the beds of navigable streams is qualified by an easement in favor of the General Government for the benefit of navigation. This easement is derived from the commerce clause of the Constitution which conferred from Congress the power to regulate commerce with foreign nations, among the several States, and with Indian tribes. Under this power the Federal Government has the right to occupy and use, for the preservation and improvement of navigation, the whole body of the stream and the soil thereunder between ordinary high-water lines, without making compensation therefor.

In view of this legal ruling the Department of the Army has questioned its authority to alter, strengthen, or raise the Northern Pacific Railroad Co. bridge across the Columbia River within the limits of the pool of McNary Dam and has taken the position that it cannot agree to reimburse the company for the cost of making the necessary changes so as to insure the safety of the structure when the water level is raised by the dam.

Because of this decision the pending bill, H. R. 2572, was introduced.

Precedent for legislation such as proposed by this bill will be found in an act approved August 16, 1937, whereby Congress authorized reimbursement to the owners of bridges over the pool of Bonneville Dam for the cost of alterations to conform to the newly created pool; and in an act approved November 21, 1941, providing for reimbursement to bridge owners for the modification of bridges over pools of Tennessee Valley Authority dams.

The Department of the Army has suggested certain changes in the bill. The committee has adopted amendments which would accomplish this purpose.

The pending bill also provides adequate reimbursement for relocation and reconstruction of the Snake River Highway Bridge, recently constructed on plans approved by the Chief of Engineers, Department of the Army. The reconstruction of this bridge was made necessary to meet the needs of navigation resulting from the construction of the McNary lock and dam.

The committee believes there is considerable equity in the enactment of this legislation, especially in the case of multipurpose projects involving a complete change in natural conditions including the location and elevation of ordinary high-water lines.

The Secretary of the Army and the Secretary of Commerce recommend favorable action on H. R. 2572, as indicated in letters set forth below:

THE SECRETARY OF COMMERCE,
Washington, May 23, 1952.

HON. CHARLES A. BUCKLEY,
*Chairman, Committee on Public Works,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in further reply to your communication of February 14, 1951, concerning H. R. 2572, a bill to provide for the alteration, reconstruction, or relocation of certain highway and railroad bridges over the Columbia River or its navigable tributaries.

The bill would provide that the Secretary of the Army shall compensate the owner of any bridge, trestle, or other highway or railroad structure, and ap-

proaches thereto, located over the pool formed by the McNary Lock and Dam on the Columbia River and its navigable tributaries, for the reasonable actual cost of protection, alteration, reconstruction, relocation, or replacement of any such facilities as may be damaged or impaired, or as may be necessary to meet requirements of navigation or flood control, as a result of the construction of the McNary Lock and Dam. Such compensation would be provided from appropriations made by Congress for the construction of the McNary Lock and Dam or for maintenance and improvement of rivers and harbors. To accomplish the purposes of the bill, the Secretary of the Army would be empowered to enter into contracts with the owners of the affected facilities to provide for money compensation or for performance of work by the Secretary of the Army. It also would be provided that the bridge owner or the Secretary of the Army may bring suit in the district court of the United States to enforce their contractual rights or for a declaration of their rights under the proposed act.

In brief, the pending bill would provide a means of making adequate restoration and replacement of highway and railroad bridge facilities which may be adversely affected by the McNary Lock and Dam. The provisions of the bill are quite similar to the provisions of Public Law 301, Seventy-seventh Congress, approved November 21, 1941 (55 Stat. 773), which affords similar relief to owners of highway or railroad bridge facilities affected by any dam, reservoir, or other improvement under the provisions of the Tennessee Valley Authority Act.

The need for legislation of the type proposed is evidenced by complaints which have arisen from time to time that various water control and development projects by the Federal Government in certain river basin areas frequently have imposed a financial hardship on the States and their subdivisions for the reason that complete relief was not always afforded by "replacement in kind" policies under existing laws. In this connection it should be pointed out that the cost of restoring or relocating a road or bridge necessary to provide an equivalent service in lieu of the facility that was damaged or destroyed is considered to be the responsibility of the agency constructing the water resources project.

Another situation deserving comment relates to discrimination against owners of highway bridges which are required to bear alteration costs to meet navigation requirements, especially in view of the act of June 21, 1940 (54 Stat. 497), which was enacted over the President's veto. That act provides for the alteration of bridges that are used for carrying railroad traffic or for carrying both railroad and highway traffic where such bridges unreasonably obstruct navigation, but it does not apply to a bridge used solely for highway traffic. It provides that the part of the cost of the alteration of any bridge carrying both railroad and highway traffic that is attributable to the requirements of railroad traffic shall be met by the Federal Government, but that the cost of such alteration attributable to highway traffic shall be borne by the proprietor of the highway. The pending bill would appear to prevent any such possible discrimination against the proprietors of any highway structure affected by the McNary lock and dam.

For reasons indicated by the foregoing, this Department recommends that favorable consideration be given to the enactment of legislation of the type embodied in the pending bill.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this letter to your committee. If we can be of further assistance in this matter, please call upon us.

Sincerely yours,

CHARLES SAWYER,
Secretary of Commerce.

DEPARTMENT OF THE ARMY,
Washington, D. C., May 12, 1952.

HON. CHARLES A. BUCKLEY,
*Chairman, Committee on Public Works,
House of Representatives.*

DEAR MR. BUCKLEY: Reference is made to your request for the views of this Department on H. R. 2572, Eighty-second Congress, to provide for the alteration, reconstruction, or relocation of certain highway and railroad bridges over the Columbia River or its navigable tributaries.

The Department of the Army offers no objection to enactment of the bill, the purpose of which is to provide for compensating bridge owners for the cost of altering, reconstructing, relocating, replacing, or protecting highway and railway bridges, trestles, or structures endangered, adversely affected or requiring alteration to meet the needs of navigation or flood control, resulting from the construction of the McNary lock and dam in the Columbia River.

The Supreme Court of the United States has held that ownership of structures in or over the beds of navigable streams is qualified by an easement in favor of the General Government for the benefit of navigation. This easement is derived from the commerce clause of the Constitution which conferred upon Congress the power to regulate commerce with foreign nations, among the several States, and with Indian tribes. Under this power the Federal Government has the right to occupy and use, for the preservation and improvement of navigation, the whole body of the stream and the soil thereunder between ordinary high-water lines, without making compensation therefor.

In view of this legal ruling this Department has questioned its authority to alter, strengthen, or raise the Northern Pacific Railroad Co. bridge across the Columbia River within the limits of the pool of McNary Dam and has taken the position that it cannot agree to reimburse the company for the cost of making the necessary changes so as to insure the safety of the structure when the water level is raised by the dam.

Precedent for legislation such as proposed by H. R. 2572 will be found in an act approved August 16, 1937 (50 Stat. 648), whereby Congress authorized reimbursement to the owners of bridges over the pool of Booneville Dam for the cost of alterations to conform to the newly created pool; and in an act of November 21, 1941 (55 Stat. 773), providing for reimbursement to bridge owners for the modification of bridges over pools of Tennessee Valley Authority dams.

The Department feels that there is considerable equity in the enactment of such legislation, especially in the case of multipurpose projects involving a complete change in natural conditions including the location and elevation of ordinary high-water lines. However, there appears to be no valid reason for granting bridge owners the right to bring court action against the United States. Accordingly, it is recommended that all of subsection (b), except the proviso, be stricken from the bill.

In addition, the following changes are recommended:

(a) On page 1, line 8, after the word "will" insert "in the opinion of the Chief of Engineers."

(b) On page 2, lines 13 and 14, strike out "by the Secretary of the Army."

(c) On page 3, line 2, before the word "Secretary" insert "Chief of Engineers, acting under the direction of the."

(d) On page 3, line 8, change "Secretary of the Army" to "Corps of Engineers."

Change (a) is recommended in order to make the need for alteration a matter for decision by the Federal Government. Changes (b), (c), and (d) are suggested in the interest of simplifying administration.

It is further suggested that the committee may wish to consider the advisability of making the basis for apportionment of cost conform to the formula established by Congress in the act of June 21, 1940, providing for Federal participation in the cost of alteration of railroad bridges which are found to be obstructions to navigation. This could be accomplished by striking out all of the sentence after the word "equal" in line 21, page 2, and substituting therefor "such part of the cost as is attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including the expectable savings in repair or maintenance costs; and that part of the cost attributable to the requirements of traffic by railroad or highway, or both, including any expenditure for increased carrying capacity of the bridge; and such proportion of the actual capital cost of the altered bridge as the used service life bears to the total estimated service life, including that proportion of the cost of removing the altered bridge represented by the used service life."

This report has been coordinated among the departments and boards of the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PAGE, Jr.,
Secretary of the Army.